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## REMARKS

Claims 1 – 33 of the above-identified application were rejected during prosecution of the above identified patent application before a Request for Continuation Examination was filed on June 29, 2006. More specifically, after a final Office Action dated February 3, 2006 applicant filed a Rule 1.116 amendment which, in accordance with the Advisory Action of May 2, 2006, was not entered on the record. Applicant understands that the claims and remarks submitted in applicant's previous Rule 1.116 amendment are now included in the record.

In the present amendment the applicant, acting through the undersigned attorney wishes to simplify the claims, reduce their number, place them in better form by making some editorial changes and make certain amendments which are discussed below. For this reason it was considered desirable to cancel the existing claims and to replace them with "formally" new claims which, except for the changes discussed below, substantively correspond to the claims submitted with the Rule 1.116 Amendment.

Rejection of the claims over prior art has been overcome or is inapplicable to the present claims

The principal reference against the claims during the entire prosecution was United States Patent No. 6,436,458 (*Kuechle et al.*) under 35 U.S.C. §102. Applicant respectfully submits that the instant claims are readily distinguishable from the subject matter of this reference.

> "[A]nticipation by inherent disclosure is appropriate only when the reference discloses prior art that must *necessarily* include the unstated limitation. . . ."
>
> *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 62 USPQ2d 1865 (Fed. Cir. 2002)

First, the main concern of *Kuechle et al.* is to provide a scoopable dough. The reference is not at all concerned and does not describe elimination or minimization of acrylamide formation during the cooking, baking or frying process.

The *Kuechle et al.* reference discloses adding protein and/or a protein supplement to the dough to make it scoopable and perhaps to otherwise improve its characteristics, although definitely not for reducing acrylamide formation during heating. The main issue during prosecution was whether the instant claims, to the extent they call for adding amino acids to the food before cooking by heat, are anticipated or rendered obvious by this reference's disclosure of adding protein and/or a protein supplement.

The applicant respectfully submits that the Remarks which accompany applicant's Rule 1.116 Amendment filed on April 20, 2006 effectively rebut any assertion by the Examiner regarding the anticipatory nature of the *Kuechle et al.* reference, or that this reference would render the claims obvious. In this Continuing Examination applicant's Rule 1.116 Amendment and accompanying declaration(s) and exhibits are included in the record of this case. In this response applicant adopts and relies on the remarks and other documents submitted with the Rule 1.116 Amendment.

In summary and further clarification the applicant notes the following. It is well understood in the art that proteins and amino acids are different substances. It is true that proteins are built from amino acids, however the average protein is hundreds and sometimes thousands of times of greater molecular weight than the average amino acid. Comparing or identifying proteins with amino acids is akin to comparing a brick house to the individual bricks from which the house is built.

There can be no scientific disagreement over the facts that proteins and amino acids are different chemical entities. The meaning of the term "protein supplement" is also beyond serious scientific dispute in this case, because of the manner it is defined in the *Kuechle et al.* reference:

"A suitable protein supplement can include proteins resulting from amino acids such as, for example glycine, alanine ..... and arginine." (Column 4, lines 50 – 55).

Thus, the reference defines a "protein supplement" as a protein. Nowhere does the *Kuechle et al.* reference discloses or suggests that individual (single molecule) amino acids are to be added to the scoopable dough of that reference.

Again, using the analogy of a house versus a single brick, the above quoted definition is akin to defining the type bricks from which a particular house is built while still identifying the whole house and not its bricks. Nor does the reference disclose or suggests anywhere the addition of a sulfonic acid to the scoopable dough. In this regard applicant notes Column 8 lines 15 – 26 of the reference. These lines define "acidic leavening agents" to be added to the dough. However, none of the substances recited there are sulfonic acids.

The presently submitted claims avoid reciting any protein or peptide (compounds where two or more amino acids are covalently linked) as the substance to be added to the food before cooking by heat. Thus, there is no identity in the subject matter and there is no anticipation. Moreover, because the *Kuechle et al.* reference is entirely silent about acrylamide formation a person of ordinary skill in the art receives no suggestion whatsoever to add amino acids, or sulfonic acids to foods to be cooked by heat for the purpose of reducing acrylamide formation.

> "An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed in the prior art and that such existence would be recognized by persons of ordinary skill in the field of the invention. *See In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); *Diversitech Corp. v.*

*century steps, Inc.*, 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988)."

In light of the foregoing, all outstanding claims of the above-identified application are believed to be in *prima facie* allowable condition and their early allowance is respectfully solicited.

In the event the Examiner is of the opinion that a telephone conference with the undersigned attorney would materially facilitate the final disposition of this case, she is respectfully requested to telephone the undersigned attorney at the below listed telephone number.

I hereby certify that this correspondence is being transmitted via facsimile to the USPTO at 571-273-8300 on September 6, 2006.

By: Sharon Farnus

Sharon Farnus

Signature

Dated: September 6, 2006

Very truly yours,

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